THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.18210 of 2006

Dated: 08-09-2006

Between:

L. Lalitha Kumari.

..... PETITIONER

AND

The Joint Collector, & Chairman,
District Level Scrutiny Committee, Chittoor, and two others.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE V.V.S. RAO

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ORDER:

The petitioner is sitting Member of Legislative Assembly. She was elected from Palamaneru Legislative Constituency, the seat reserved for scheduled caste. She obtained community certificate from the third respondent under the provisions of the Andhra Pradesh (Schedule Castes, Schedule Tribes and Backward Classes) Regulation of Issue of Community Certificates Act, 1993 (the Act, for brevity), and the Andhra Pradesh (Schedule Castes, Schedule Tribes and Backward Classes) Regulation of Issue of Community Certificates Rules, 1997 (the Rules, for brevity). At the time of filing nomination in 2004, she also enclosed the said certificate. Be that as it is, her election was challenged in an election petition, being E.P.No.9 of 2004 before this Court. Statedly, the trial and arguments have been completed and the matter is reserved for judgment.

A show cause notice was issued to the petitioner calling upon her to show cause as to why the community certificate issued to her under the Act and the Rules should not be cancelled for the reasons mentioned therein. Thereafter the matter was referred to the District Level Scrutiny Committee under Rule 9 of the Rules. The said Committee under the Chairmanship of Joint Collector, Chittoor, issued the impugned notice dated 15-05-2006 in Form VI requesting the petitioner to attend to the enquiry on 22-05-2006 at 4.00 p.m. at Joint Collector's chambers into the alleged fraudulently obtained community certificate. The petitioner submitted a lengthy explanation/representation on 04-08-2006, but again assailed notice of enquiry in this writ petition.

The learned counsel for the petitioner raised three contentions. First, he would urge that when the question of the community status of the petitioner is itself a subject matter of E.P.No.9 of 2004 before this Court, there cannot be a parallel enquiry by the Authorities under the Act and the Rules. Secondly, he contends that disputes arising out of elections which are subject matters of election petitions under Section 80 of the Representation of the People Act, 1951, are excluded from the purview of the enquiry by the authorities under the Act and the Rules. Lastly he submits that the scope of enquiry under Rule 9 of the Rules is very narrow, and therefore, the same cannot be permitted as the ultimate decision in the election petition would override any decision by the Authorities under the Act.

After giving anxious consideration and perusal of the material on

record, this Court is not able to accept the writ petition for the reason that against a notice of enquiry issued in Form VI pursuant to Rule 9(2) of the Rules, writ petition cannot be entertained. The impugned notice is intimation requiring the petitioner to attend the enquiry, which is issued in compliance with the statutory Rules, and the same cannot be treated as deciding any issue or a matter requiring judicial review.

In **State of U.P. v. Shri Brahma Datta Sarma**[1], the Supreme Court held as under.

> The High Court was not justified in quashing the show cause notice. When a show cause notice is issued to a Govt. servant under a statutory provision calling upon him to show cause, ordinarily the Govt. servant must place his case before the authority concerned by showing cause and the courts should be reluctant to interfere with the notice at that stage unless the notice is shown to have been issued palpably without any authority of law. **The purpose of issuing show cause notice is to afford opportunity of hearing to the Govt. servant and once cause is shown it is open to the Govt. to consider the matter in the light of the facts and submissions placed by the Govt. servant and only thereafter a final decision -in the matter could be taken. Interference by the Court before that would be premature**. The High Court in our opinion ought not to have interfered with the show cause notice.
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> (emphasis supplied)

In **Special Director v. Mohd.Ghulam Ghouse**[2]**,** the Supreme Court held as under:

> This Court in a large number of cases has deprecated the practice of the High Courts entertaining writ petitions questioning legality of the show-cause notices stalling enquiries as proposed and retarding investigative process to find actual facts with the participation and in the presence of the parties. Unless the High Court is satisfied that the show-cause notice was totally non est in the eye of the law for absolute want of jurisdiction of the authority to even investigate into facts, writ petitions should not be entertained for the mere asking and as a matter of routine, and the writ petitioner should invariably be directed to respond to the show-cause notice and take all stands highlighted in the writ petition. Whether the show-cause notice was founded on any legal premises, is a jurisdictional issue which can even be urged by the recipient of the notice and such issues also can be adjudicated by the authority issuing the very notice initially, before the aggrieved could approach the Court. Further, when the court passes an interim order it should be careful to see that the statutory functionaries specially and specifically constituted for the purpose are not denuded of powers and authority to initially decide the matter

> and ensure that ultimate relief which may or may not be finally granted in the writ petition is not accorded to the writ petitioner even at the threshold by the interim protection granted.
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> (emphasis supplied)

Therefore, the petitioner can raise all the objections raised before this Court, before the District Level Scrutiny Committee, Chittoor. Secondly, Section 21 of the Act incorporates a presumption regarding the validity of the community certificate issued by a competent authority, unless it is cancelled under the provisions of the Act. Admittedly, the petitioner obtained community certificate from the third respondent under the provisions of the Act, while filing nomination, and therefore, she is as much entitled to enjoy the benefit under Section 21 of the Act till the community certificate is cancelled by the District Collector under Section 5 of the Act. Even if the enquiry is now allowed, no prejudice would be caused to the petitioner. It shall be open to the petitioner to raise all the objections before the first respondent-Committee if the enquiry is still pending. The petitioner can file appropriate application, if so advised, if it is so permissible in E.P.No.9 of 2004.

The writ petition, with the above observations, is accordingly disposed of. No costs.

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(**V.V.S.RAO, J**)

08th September, 2006
ghn

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[1] AIR 1987 SC 943

[2] (2004) 3 SCC 440